

3

No. 90-1056

Supreme Court, U.S.

FILED

MAY 30 1991

OFFICE OF THE CLERK

In The
Supreme Court of the United States
October Term, 1990

CHARLES W. BURSON, Attorney General and Reporter
for the STATE OF TENNESSEE,

Petitioner,

v.

REBECCA FREEMAN,

Respondent.

On Writ Of Certiorari To The Tennessee Supreme Court

JOINT APPENDIX

CHARLES W. BURSON*
Attorney General &
Reporter

JOHN KNOX WALKUP
Solicitor General

ANDY D. BENNETT
Deputy Attorney General

MICHAEL W. CATALANO
Deputy Attorney General
450 James Robertson Parkway
Nashville, Tennessee 37243-0485
(615) 741-3499
Counsel for Petitioner

ALAN B. MORRISON*
Public Citizen Litigation
Group
Room 700, 2000 P Street
Washington, D.C. 20036

JOHN E. HERBISON
1205 Eighth Avenue South
Nashville, Tennessee 37203
Counsel for Respondent

*Counsel of Record

Petition For Certiorari Filed On December 28, 1990
Certiorari Granted On April 15, 1991

TABLE OF CONTENTS*

ITEM	PAGE
Chronological List of Dates on Which Relevant Pleadings Were Filed	1
Complaint.....	2
Answer of Defendant Metropolitan Nashville Davidson County.....	8
Answer of Defendant W. J. Michael Cody.....	11
Order entered July 20, 1988.....	14
Transcript of Proceeding	16
Order entered May 5, 1989	50
Notice of Appeal	52
Order entered August 18, 1989.....	53

* The following documents are contained in the Appendix of the Petition for Writ of Certiorari and not reproduced in this Joint Appendix: Memorandum of the trial court entered on April 26, 1989 and Opinion of the Tennessee Supreme Court filed on October 1, 1990.

**CHRONOLOGICAL LIST OF DATES ON WHICH
RELEVANT PLEADINGS WERE FILED**

ITEM	DATE
Complaint filed	07/28/87
Answer of Defendant Metropolitan Nashville Davidson County filed	07/29/87
Answer of Defendant W. J. Michael Code filed	09/02/87
Order dismissing Metropolitan Nashville Davidson County entered	07/20/88
Trial on merits	10/24/88
Memorandum of trial court filed	04/26/89
Final order of trial court filed	05/05/89
Notice of appeal filed	05/18/89
Tennessee Supreme Court decision entered	10/01/90

IN THE CHANCERY COURT FOR DAVIDSON
COUNTY, TENNESSEE

MARY REBECCA FREEMAN, for)	
herself and all others)	
similarly situated,)	
Plaintiff,	)	No. 87-1763-1
VS.	)	Filed
	)	Jul 28 1987
W. J. MICHAEL CODY, in his)	
capacity as ATTORNEY GENERAL)	
and REPORTER for the STATE OF)	
TENNESSEE, DAVIDSON COUNTY)	
ELECTION COMMISSION and)	
METROPOLITAN GOVERNMENT)	
OF NASHVILLE/DAVIDSON)	
COUNTY, TENNESSEE,)	
Defendants.)	

VERIFIED COMPLAINT FOR DECLARATORY
JUDGMENT AND FOR INJUNCTIVE RELIEF

Comes the Plaintiff, MARY REBECCA FREEMAN, by and through her attorney, Arnold Peebles, Jr., pursuant to Rules 57 and 65 of the Tennessee Rules of Civil Procedure, and sues the Defendants for Declaratory Judgment and Injunctive relief. For cause of action she would show as follows:

I. PARTIES AND JURISDICTION

1. This Court has jurisdiction over the subject matter of this cause according to Tennessee Code Annotated §§ 17-1-204 and 29-14-101 *et seq.*

2. The Plaintiff, MARY REBECCA FREEMAN, is a resident and citizen of Nashville, Davidson County, Tennessee. She is an attorney licensed to practice by the State of Tennessee. She is Treasurer for the Committee to Elect Tom Watson, the principal campaign committee for a candidate for the Metropolitan Council of Nashville/Davidson County, Tennessee from the seventh councilmanic district. She is a six-term member of the Davidson County Democratic Executive Committee, having been chosen for such office by popular election in Democratic Party primary elections in 1976, 1978, 1980, 1982, 1984 and 1986. She has a present intention to vote in the municipal elections for Metropolitan Nashville/Davidson County on August 6, 1987. She has a present intention to distribute circulars or handbills advocating the election of Tom Watson as a member of the Metropolitan Council at one or more polling places in Nashville, Davidson County, Tennessee on August 6, 1987. She has a present intention to run as a candidate for re-election to the Davidson County Democratic Executive Committee in the Democratic primary election expected to be held in March of 1988.

3. The Defendant, W. J. MICHAEL CODY, is, on information and belief, a resident and citizen of Nashville, Davidson County, Tennessee. He is employed as Attorney General and Reporter for the State of Tennessee. He is sued in his official capacity only.

4. The Defendant, DAVIDSON COUNTY ELECTION COMMISSION, is a governmental body established and constituted according to T.C.A. § 2-12-101 *et seq.* It is responsible for conducting elections in Metropolitan

Nashville/Davidson County and for the administration and implementation of applicable election laws therein.

5. The Defendant, METROPOLITAN GOVERNMENT OF NASHVILLE/DAVIDSON COUNTY, TENNESSEE, is a municipal corporation with its principal place of business located in Nashville, Davidson County, Tennessee. Agents and/or employees of the Defendant Metropolitan Government are principally responsible for the operational enforcement of penal statutes in Nashville, Davidson County, Tennessee, including but not limited to such election laws as carry penalties for violations thereof.

II. FACTS

6. The Plaintiff, Mary Rebecca Freeman, has for substantially all of her adult life been actively involved in political campaigns on behalf of diverse candidates for public office, including numerous campaigns in Nashville, Davidson County, Tennessee. Ms. Freeman avers that she has observed that candidates for public office in Davidson County have historically been permitted to display campaign signs, posters and/or other campaign literature, including but not limited to circulars and/or handbills, on premises where polling places are located provided that no such materials are displayed within one hundred feet (100') of the entrances to such polling places.

7. On or about July 24, 1987, Ms. Freeman discovered that the Defendant Davidson County Election Commission had sent to Tom Watson a copy of Opinion No. 87-59 from the office of the Defendant Mr. Cody, relative

to T.C.A. § 2-7-111(b). Such Opinion Letter is incorporated by reference herein and a copy is attached hereto.

8. Ms. Freeman verily believes that it is the present intention of the Defendant Davidson County Election Commission to direct agents and/or employees of the Defendant Metropolitan Government to prohibit the display of campaign signs, posters and/or other campaign literature on premises where polling places are located, irrespective of the one hundred foot (100') boundary specified in T.C.A. § 2-7-111, in connection with the municipal elections scheduled for August 6, 1987.

9. Tennessee Code Annotated § 2-19-119 purports to impose criminal penalties upon any person who violates T.C.A. § 2-7-111 while boundary signs are posted.

10. Ms. Freeman avers that T.C.A. § 2-7-111 on its face violates the First and Fourteenth Amendments to the United States Constitution and Article I, § 19 of the Constitution of the State of Tennessee in that it seeks to prohibit the dissemination of some, but not all, printed material, such distinction being based solely upon the content of such printed material.

11. Ms. Freeman avers that T.C.A. § 2-7-111(b) is on its face void for vagueness in contravention of the requirements of the First and Fourteenth Amendments to the United States Constitution and Article I, § 8 of the Constitution of the State of Tennessee.

12. If T.C.A. § 2-7-111 is enforced as interpreted by the Defendant Mr. Cody, the rights of Ms. Freeman and others similarly situated to read and receive information

relative to the processes of government will be denied or abridged.

13. If T.C.A. § 2-7-111 is enforced as interpreted by the Defendant Mr. Cody, the rights of Ms. Freeman and others similarly situated to disseminate information relative to the processes of government will be denied or abridged.

14. If T.C.A. § 2-7-111 is enforced as interpreted by the Defendant Mr. Cody, Ms. Freeman and others similarly situated will be unreasonably forced to face a real, substantial and imminent threat of criminal prosecution in violation of the United States and Tennessee Constitutions.

15. If the injunctive relief prayed for herein is denied, Ms. Freeman and others similarly situated will suffer immediate and irreparable injury.

III. PRAYER FOR RELIEF

PREMISES CONSIDERED, MARY REBECCA FREEMAN, FOR HERSELF AND FOR ALL OTHERS SIMILARLY SITUATED, PRAYS:

A) That process issue and the Defendants be compelled to appear and answer in this cause.

B) That this Court issue a Declaratory Judgment that T.C.A. § 2-7-111 on its face violates the United States Constitution and the Constitution of the State of Tennessee.

C) That this Court issue a Temporary Injunction — prohibiting the Defendants, their agents, servants and/or

employees from interfering with the display of campaign posters, signs and/or other campaign literature on the premises of any polling place in Nashville, Davidson County, Tennessee outside a radius of one hundred feet (100') from the entrances to any such polling place during the pendency of this lawsuit.

D) That this Court issue a Permanent Injunction prohibiting the Defendants, their agents, servants and/or employees from enforcing T.C.A. §§ 2-7-111 and/or 2-19-119.

E) That the costs of this action be taxed jointly and severally to the Defendants in this cause.

F) For such further or general relief as may be proper.

THIS IS THE FIRST APPLICATION
FOR EXTRAORDINARY PROCESS IN THIS CAUSE.

Respectfully submitted,

/s/ Arnold Peebles, Jr.
Arnold Peebles, Jr.

Attorney for Plaintiff
53 Lindsley Avenue
Nashville, Tennessee 37210
(615) 244-1461

[Surety and Affidavit omitted in printing]

IN PART II OF THE CHANCERY COURT OF
DAVIDSON COUNTY AT NASHVILLE

MARY REBECCA FREEMAN)	
	)	NO. <u>87-1763-I</u>
Vs.)	
W.J. CODY, ETC., ET AL.	)	(Chancellor High)

FILED 1987 JUL 29

ANSWER
OF DEFENDANT,
METROPOLITAN GOVERNMENT OF
NASHVILLE/DAVIDSON COUNTY TENNESSEE

Your DEFENDANT, Metropolitan Government of Nashville/Davidson County, Tennessee (correct name is "The Metropolitan Government of Nashville and Davidson County"), for separate Answer to the Complaint, doth respectfully state and show unto this Honorable Chancery Court as follows, to-wit:

1. DEFENDANT admits these averments.

2. DEFENDANT is without knowledge or information sufficient for form a belief as to the truth of whether Plaintiff is the Treasurer for the Committee to Elect Tom Watson, the principal campaign committee for a candidate for the Metropolitan Council of Nashville/Davidson County, Tennessee from the seventh councilmanic district or as to the truth of what Plaintiff's present intentions are. Defendant admits the remaining averments.

3. DEFENDANT admits these averments.

4. DEFENDANT admits these averments.

5. DEFENDANTS admit these averments.

6. DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of these averments.

7. DEFENDANT admits a copy of an Opinion Letter is attached to the Complaint. The Opinion Letter speaks for itself. DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of the remaining averments.

8. TCA, § 2-7-111 speaks for itself. DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of the remaining averments.

9. TCA, §§ 2-19-119 and 2-7-111 speak for themselves.

10. DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of these averments.

11. DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of these averments.

12. DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of these averments.

13. DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of these averments.

14. DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of these averments.

15. DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of these averments.

All averments neither specifically admitted nor denied, are now generally denied, the same as if specifically denied. Wherefore, DEFENDANT prays the equities of this Honorable Chancery Court.

The Department of Law of The
Metropolitan Government of
Nashville and Davidson County

By /s/ William F. Howard
William F. Howard
Metropolitan Attorney

204 Metropolitan Courthouse
Nashville, Tennessee 37201
(615) 259-6141

Attorneys for DEFENDANT

IN THE CHANCERY COURT FOR DAVIDSON
COUNTY, TENNESSEE
PART I AT NASHVILLE

MARY REBECCA FREEMAN,]	
Plaintiff	]	NO: 87-1763-I
-vs-	]	[CHANCELLOR
W. J. MICHAEL CODY, et al.	]	HIGH BY
Defendants	]	INTERCHANGE!
	]	(Filed SEP 2, 1987)

ANSWER OF W. J. MICHAEL CODY

1. The defendant would admit the allegations contained in paragraph 1 of the complaint.
2. The defendant has insufficient information to admit or deny the factual allegations contained in paragraph 2 of the complaint and would demand strict proof thereof.
3. The defendant would admit the allegations contained in paragraph 3 of the complaint.
4. The defendant would admit the allegations contained in paragraph 4 of the complaint.
5. The defendant would admit the allegations contained in paragraph 5 of the complaint.
6. The defendant has insufficient information to admit or deny the factual allegations contained in paragraph 6 of the complaint and would demand strict proof thereof.

7. The defendant has insufficient information to admit or deny the factual allegations contained in paragraph 7 of the complaint and would demand strict proof thereof.

8. The defendant has insufficient information to admit or deny the factual allegations contained in paragraph 8 of the complaint and would demand strict proof thereof.

9. The defendant would admit that T.C.A. § 2-19-119 imposes criminal penalties on any person who violates T.C.A. § 2-7-111.

10. The defendant would deny the allegations contained in paragraph 10 of the complaint.

11. The defendant would deny the allegations contained in paragraph 11 of the complaint.

12. The defendant would deny the allegations contained in paragraph 12 of the complaint.

13. The defendant would deny the allegations contained in paragraph 13 of the complaint.

14. The defendant would deny the allegations contained in paragraph 14 of the complaint.

15. The defendant would deny the allegations contained in paragraph 15 of the complaint.

16. All other averments which have not been admitted or denied are hereupon denied as if set out fully.

AND NOW having fully answered the plaintiff's complaint the defendant would respectfully urge this Court to dismiss this complaint.

Respectfully submitted,

W. J. MICHAEL CODY
Attorney General and Reporter

/s/ Michael W. Catalano
MICHAEL W. CATALANO
Deputy Attorney General
450 James Robertson Parkway
Nashville, TN 37219
(615) 741-6440

[Certificate of Service omitted in printing]

IN THE CHANCERY COURT FOR DAVIDSON
COUNTY, TENNESSEE

MARY REBECCA FREEMAN,)	
for herself and all others)	
similarly situated,	)	No. 87-1763-I
Plaintiff,	)	ORDER FILED &
vs.	)	ENTERED 7/20/88
W. J. MICHAEL CODY, in his	)	MINUTE BOOK 269
capacity as ATTORNEY	)	PAGE 699
GENERAL AND REPORTER	)	IT IS SO ORDERED.
for the STATE OF	)	COSTS ARE TAXED
TENNESSEE, DAVIDSON	)	TO THE
COUNTY ELECTION	)	PLAINTIFF(S).
COMMISSION and	)	/s/ <u>Irvin H. Kilcrease</u>
METROPOLITAN	)	<u>Jr</u>
GOVERNMENT OF	)	CHANCELLOR
NASHVILLE/DAVIDSON)	
COUNTY, TENNESSEE,)	
Defendants.)	

NOTICE OF VOLUNTARY NONSUIT
AS TO THE DEFENDANT METROPOLITAN
GOVERNMENT

Comes now the Plaintiff, Mary Rebecca Freeman, by and through her attorney, pursuant to Rule 41.01 of the Tennessee Rules of Civil Procedure, and submits this Notice of Voluntary Nonsuit as to the Defendant Metropolitan Government of Nashville/Davidson County, Tennessee, counsel for the parties having conferred and

being in agreement that any and all issues as to the Defendant Metropolitan Government have become moot.

Respectfully submitted,

/s/ John E. Herbison
JOHN E. HERBISON #12659
Attorney for Plaintiff
1205 Eighth Avenue South
Nashville, Tennessee 37203
(615) 254-6300

IN THE CHANCERY COURT FOR DAVIDSON
COUNTY AT NASHVILLE, TENNESSEE

MARY REBECCA FREEMAN, for)	
herself and all others)	
similarly situated,)	
)	
Plaintiff,	)	Civil Action
vs.	)	No. 87-1763-I
)	
W. J. MICHAEL CODY, in his	)	Filed
capacity as ATTORNEY GENERAL	)	JUL 24 1989
AND REPORTER for the STATE)	
OF TENNESSEE, DAVIDSON	)	Filed
COUNTY ELECTION	)	AUG 31 1989
COMMISSION and)	
METROPOLITAN GOVERNMENT)	
OF NASHVILLE/DAVIDSON)	
COUNTY, TENNESSEE.)	
)	
Defendants.)	

TRANSCRIPT ON APPEAL

OCTOBER 24, 1988

HEARD BEFORE: Chancellor Irvin Kilcrease Davidson
County Chancery Court Nashville,
Tennessee

* * *

[p. 18] MS. MARY REBECCA FREEMAN, having
been previously sworn was examined and testified as
follows:

DIRECT EXAMINATION

BY MR. HERBISON:

Q. State your name, please.

A. My name is Mary Rebecca Freeman.

Q. Ms. Freeman, what is your occupation?

A. I'm an attorney.

Q. Ms. Freeman, what political office do you hold?

A. I am the democratic committee woman from the
Seventh Councilmatic District. I'm a member of the
Davidson County Democratic Executive Committee.
That's a political office within the Democratic party.

Q. Okay. How long have you been involved in poli-
tics?

A. Since 1970.

Q. And where have you principally been involved
in politics?

[p. 19] A. Primarily, in Nashville, Tennessee. Before
I was registered to vote in Nashville, I was also registered
to vote in Murfreesboro, where I resided at the time.

And when I moved back to Nashville, after I com-
pleted graduate school, I changed my registration to
Davidson County.

Q. Okay. Has your political activity been - been on
a purely local level, that is, within Davidson County?

A. No, it has not exclusively been on the local level.
I have worked in numerous local elections, but I have

also worked in state-wide campaigns. I was the coordinator of the voter registration and get-out-the-vote effort for the Carter campaign in 1980 in Tennessee.

And during – particularly during that campaign, I worked throughout the state. And I organized voter registration for the Carter campaign, and also election day activities in every county in the state.

[p. 20] I also have worked in two other campaigns that are state-wide. I worked in 1978 as a – in Bill Bruce for U. S. Senate campaign, which was a state-wide – he was a candidate in the Democratic primary.

And I also worked in the general election in 1978 as – well, for Keith Bissell, who is currently the Public Service Commissioner. And I – that was a full time position, also.

Q. Okay. Ms. Freeman, what activity – what particular activities have you engaged in on election day for the past several years?

A. Well, almost every election day – I think I counted three election days in the past 17 years I have not worked at polls. But almost every election day, I have worked at polls on behalf of a candidate.

When I say work a poll, I've bee [sic] been a poll worker, outside of a poll – a polling place, principally, my own, which is in east Nashville. But I have [p. 21] worked several other places on behalf of different candidates, soliciting votes, talking to voters.

In some cases, soliciting persons to support various issues, but primarily for candidates running for office.

Q. What have you observed as to where these – where the polling places type of activity has been traditionally been permitted?

A. Well, in the past, in Davidson County, it's been my experience that the Election Officials permitted activity – poll workers to –

MR. CATALANO: Your Honor, I'm going to object. She can only testify as to what she actually saw.

THE WITNESS: I was testifying as to my experience.

MR. HERBISON: I believe she has testified as to what she has observed.

MR. CATALANO: I just want to make it clear that she is testifying about as to what –

[p. 22] THE COURT: I understand.

MR. CATALANO: – she saw, as opposed to –

THE COURT: All right. This is on personal knowledge.

THE WITNESS: Well, as I say, as to my own personal experience and personal knowledge, everything that I have seen is – well, indicates that the Election Commission officials have enforced what's called or listed as a hundred-foot boundary, and have allowed persons to solicit votes and to approach voters outside a boundary, which is approximately a hundred feet from the door of a polling place.

And that has been - I've seen few infractions of that. When they have, I've seen it taken care of pretty expeditiously.

BY MR. HERBISON:

Q. Okay. You filed this lawsuit on July 28th of 1987. At the time you filed this lawsuit, did you have any problem with the traditional interpretation of the statute?

A. Well, I disagreed with it, but I lived with it. I felt like it - well, I just lived with it.

The problem I had at that time, that really caused - well, prompted me to file the lawsuit, was that the traditional interpretation, from my understanding from talking with Election Officials or personnel, and from talking to persons - at that time, I was the treasurer for a campaign.

I was the treasurer for the Committee to elect Tom Watson. Tom Watson is a local attorney, and he was running for Metro Councilman of Davidson County. And in that position, I had regular contact with Tom and with the campaign.

And Mr. Watson was a candidate in the August election, and he had received correspondence from the Election Commission, to the effect that the traditional interpretation was going to be changed. And we had heard other information to indicate that it in effect, [p. 24] had been - the pattern of enforcement was going to be changed.

I'll discuss that, if you -

Q. Okay. And what were these conversations based upon which you feared that the traditional -

A. All right.

Q. - interpretation would be -

A. Well, it wasn't just conversations. But I had - first of all, the - let me go back to this letter for a minute.

Mr. Watson received a letter. And it was his understanding, my understanding, from - I believe I read the letter. But, in any case, from talking to him, that the statute was going to be enforced, so that a person could not only - not only - the traditional interpretation of the hundred-foot boundary law was going to be changed.

And that it would be more restrictive. That poll - what I understood was, that poll workers were not [p. 25] going to be allowed on the grounds of the polling place. That no, you know, literature, no signs or anything would be permitted to on the grounds of the poll place.

Now -

Q. Ms. Freeman, why did that concern you?

A. Well, it concerned me because I intended to work a poll that day on behalf of Tom Watson, and I intended to - I hoped to work polls for candidates in the future.

I know that by working a poll, I can convince people to vote for some individuals, because I've done it for so long, that I know I can have a positive effect for the candidate that I work for.

Now, I'm not saying that all people are influenced by poll workers. But I think there's a significant number,

particularly in races where there are numerous people on the ballot, or races that don't have as much publicity as some others, a poll worker is particularly [p. 26] effective in that regard.

If you have a race far down on the ballot, as opposed to one where a reminder of name recognition, is all that suffices.

Q. Okay. You testified that you are a member of the Davidson County Democratic Executive Committee. How do you get elected for that office?

A. I ran for election. And I'm elected to that office every two years by the voters. And they -- persons who vote in the Democratic Primary in even-numbered years.

Q. Based upon your experience as a candidate for office, what have you observed as to what means of communication are most effective as to your particular office?

A. Well, as to my particular office, the best way I can get votes -- or the most effective way, is to be at the polls or have the poll workers on election day, to solicit votes for me.

It's a race that, as I said, [p. 27] it's usually about at the bottom of the ballot. And if you have a number of people running for office in the Democratic Primary or in a General Election, concurrent at that time, people -- voters tend to kind of lose sight of who you are.

I have tried other methods, but I -- because I've worked for so long, and because I'm known in the community where I live, I have -- I feel like I'm effective in

that I remind people of who I am, and that I'm running, or the persons working on my behalf also do that.

Q. Why would other means of communication, such as paid advertising, be less effective?

A. Well, for the most part, they're not district specific, and they're not cost effective. When I ran district specific, I run in one Councilmatic District. For example, run an advertisement in the community newspaper would cost me thousands of dollars. I can't afford that.

[p. 28] To run radio or television advertising, for example, would not also reach -- it may reach some people I needed to reach, but it won't reach -- but it will be also cost prohibitive.

Now, there are other methods, but basically, reminding people of who you are; what you're running for, on election day, seems to be most effective in my particular race.

Q. Ms. Freeman, based upon what you have observed, what effect does the 100-foot boundary have on your ability to communicate with perspective voters?

A. Well, in some cases, it's -- it does not allow me to reach voters, and the effect varies from polling place to polling place. And I have to -- have to explain that.

The particular polling place where I vote -- it happens to be the largest precinct in my Councilmatic District -- most of the persons who come to the poll happen to drive -- not all of them, and they park outside the 100-foot [p. 29] boundary.

But that's not true in all cases. Another polling place within my Councilmatic District is the Gallatin Road Firehall. The distance from the entrance to the firehall to the street is probably 30 feet.

If a person observes the 100-foot boundary, they'll be on the other side of Gallatin Road. There's no place to be - to work that poll, and be able to reach voters, and to be within the law.

The thing that - there is another poll, also, where there is a similar problem. Sometimes you can - the District boundaries, or the hundred-foot boundary, would exclude part of your ability to reach or talk to some people.

Now, I should say that one problem - you want to remind people of who you are. But, of course, you know -

Q. Okay. Have you ever observed any communication, other than political communications, going on at those places?

[p. 30] A. Well, yes, I have, on a limited basis. I have seen some - and I was trying to think of the example of the company, and I cannot remember it - but, in years past, I have seen some commercial solicitation, and by that I mean somebody passing out a handbill.

I have also seen - well, what I think, the line blurs as to what is political communication and what is other types of communication.

There are people that work polls on behalf of particular issues, for various reasons. And one of those reasons may be a religious reason.

For example, the people that opposed the race track issue last - in '87. A lot of those people - the poll workers that I spoke to, most of them told me that they were there because they had been asked by their church to be there.

And for them -

MR. CATALANO: Your Honor, I'm going to have to object. She's getting into hearsay.

[p. 31] THE WITNESS: I'm sorry.

THE COURT: I sustain the objection.

THE WITNESS: But my point is that people - that communication is not just - it's not purely political all the time. Politics is the amalgam of a number of different issues in life.

BY MR. HERBISON:

Q. Ms. Freeman, I'd like to ask you about a hypothetical situation. If -

MR. CATALANO: I'm going to object. You've laid the foundation for her to testify as an expert witness. If you ask her -

MR. HERBISON: I intend to ask her a question about what she would do in a hypothetical situation. It does not call for expert opinion testimony; it calls for what her contention under a specific set of circumstances would be.

THE COURT: Well, you'd have to have the underlying facts in the record, before you could ask a hypothetical question.

[p. 32] MR. HERBISON: Okay.

Q. Ms. Freeman, you've indicated that you have been involved in some activity outside Davidson County.

A. Yes, that's correct.

Q. Is it possible that you would work a polling place in Sumner County in the future?

A. If I - if the - if I was working in a state-wide campaign, or if a particular candidate asked me, that I could support, I probably would.

MR. CATALANO: Your Honor, I object to that testimony, that's speculation on her part.

THE WITNESS: Your Honor -

THE COURT: It's speculative. I sustain the objection.

THE WITNESS: Could I go back to one of your questions?

BY MR. HERBISON:

Q. Yes. If you have something that needs to be clarified.

A. Well, just - back to a few minute [sic] ago, we were talking about 1987, [p. 33] and the events that occurred at that time when we brought this lawsuit. I wanted to just add a little bit to something I said.

The - before I filed this lawsuit, I talked to two persons who had attended the poll worker's school in Metro Nashville, with the Election Commission.

Q. Who were these persons?

A. Well, I believe I talked with Raymond James and also with a woman named Anne Deowe. And they are officers of election at two various polling places.

And it was their understanding from the election school, that the enforcement of the 100-foot boundary would not allow any solicitation of votes or any distribution of materials on the grounds of the polling place on election day.

And I, of course, was fearful - and when I say fearful, I thought if I did it, I'd probably be arrested or cited, or whatever, if I went ahead and did it.

And there was one other [p. 34] thing that brought this issue to mind. In conversations with Tom Watson, the man with whom I worked in the Councilmatic race, I found out that voters who were voting in person, absentee, at Howard School were asked to - or at least one person was asked to move his car because he had a bumper sticker promoting a particular candidate.

MR. CATALANO: Your Honor, I'm going to object to that, because that is hearsay.

THE COURT: Sustain the objection. This witness has to testify as to what she has experienced. It doesn't matter -

THE WITNESS: I'm sorry, Your Honor.

THE COURT: - not what someone told her.

MR. HERBISON: Okay.

THE WITNESS: I'm trying to explain why -

THE COURT: I know what you're trying to do, but it's [p. 35] inadmissible.

MR. HERBISON: Judge, if it goes to the effect that this communication had on her state of mind, I would submit that it's proper testimony.

THE COURT: Well -

MR. HERBISON: Her state of mind was apprehension of criminal prosecution.

THE COURT: If she's talking about what somebody told her, and she got afraid, I'm not going to consider what someone told her. But she can testify to that, and based on that these rumors, that she decided - what she decided.

MR. HERBISON: Okay.

Q. Ms. Freeman, was there anything else that caused you to be fearful of criminal prosecution when you filed this lawsuit?

A. Well, basically what I've said.

Q. Okay. Ms. Freeman, how frequently have you voted since you became eligible to?

[p. 36] A. I think I've voted every time. I may have missed one election since I was eligible to vote. The law changed sometime - I think it was about 1970, to allow persons 18 years old to vote.

Q. Okay. Have you received political communications at the polling place?

A. Yes, I have.

Q. And what effect have these communications had upon you to the best of your voting behavior?

A. Well, each one is an individual case, but in some cases, my vote has been swayed by information I've received at the polls. That's occurred primarily in circumstances where a race is I'm not familiar with a candidate, or I might encounter a person who knows the candidate, or knows more about a particular issue.

And I don't - if I can ask the person questions, sometimes I get some information that will convince me to vote [p. 37] one way or another.

MR. HERBISON: Okay. I believe that's all I have of this witness.

THE COURT: You may cross examine.

[p. 38] CROSS EXAMINATION

BY MR. CATALANO:

Q. Ms. Freeman, have you ever been prohibited by any Election Officials from distributing campaign literature or soliciting votes beyond the 100-foot boundary?

A. Beyond the 100-foot boundary?

Q. Yes.

A. I think I have, but I think the election official didn't know where the boundary was. I would have argued with an official as to where the boundary was at the time.

Q. But you have - you have solicited votes and distributed materials beyond the 100-foot boundary at elections?

A. Beyond the 100-foot boundary I have, that's correct.

Q. And in quite a few elections.

A. That's correct.

Q. And I believe you said that [p. 39] you've seen on a limited basis, commercial solicitations at polling places. Can you name one particular instance, were there any other instances?

A. Mike, not that I can recall, honestly. I've been trying to remember that, and I have a vague memory of that. I think there was one occasion?

Q. Any religious solicitations?

A. Indirectly, yes.

Q. Indirectly, what do you mean?

A. I mean people were espousing their religious beliefs by working for a particular candidate, or for a particular cause.

Q. But they were trying to solicit votes, they weren't - they weren't trying to collect money for a religious organization?

A. I've never seen anyone try to collect money for a religious organization -

Q. Or pass out pamphlets for a religious organization that had absolutely [p. 40] nothing to do with the election that's going on?

A. Well, I have - now, let me explain. I haven't seen a person do that at - to persons coming in to the polls.

But for polling places that are within religious - within churches, for example, that's a perfectly natural thing to do.

And it may occur on a polling places or within a 100-foot boundary, but I haven't seen a person -

A. I'm just asking what you've seen, personally.

A. I have not seen a person hand out a pamphlet.

Q. And you've been in quite a few elections? I mean, you've been - worked the polling places at quite a few elections; is that correct?

A. Yes, sir, I primarily work one poll, but I have worked others.

Q. And you're a resident of Davidson County; is that correct?

A. That's correct.

MR. CATALANO: No further [p. 41] questions, Your Honor.

THE COURT: Anything further?

MR. CATALANO: No, Your Honor.

[p. 42] REDIRECT EXAMINATION

BY MR. HERBISON:

Q. Ms. Freeman, even though you're a resident of Davidson County, have you ever participated in procuring election day workers in other counties?

A. Yes, I have.

Q. Okay. When was that?

A. Particularly during 1980, during the Carter reelection campaign. As I said, I worked - I supervised that effort in all 95 counties of the state.

Q. Okay.

A. And tried to get people to work polls. And supervised other persons doing that in each county.

MR. HERBISON: Okay. That's all the redirect.

MR. CATALANO: No further questions.

THE COURT: You may step down.

THE WITNESS: Thank you.

THE COURT: Call your next [p. 43] witness.

MR. HERBISON: That's all the witnesses the Plaintiff intends to call.

THE COURT: Plaintiff rests. What says the Defendant?

MR. CATALANO: I would call Ann Alexander, Your Honor.

[p. 44] MS. CONSTANCE ANN ALEXANDER, having been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CATALANO:

Q. Could you state your name for the record?

A. My name is Constance Ann Alexander.

Q. And, Ms. Alexander, what is your present occupation?

A. I'm the Registrar at Large for Davidson County.

Q. How long have you been the Registrar for Davidson County?

A. I've been Registrar for Davidson County for two-and-a-half years.

Q. And prior to that time, where were you employed?

A. I was executive secretary for the Election Commission.

Q. And how long were you in that position?

[p. 45] A. I was in that position for nine years.

Q. Okay. And is that all your employment history with the Davidson County Election Commission?

A. Yes.

Q. As Registrar at Large for Davidson County, what are your duties, just in the general sense?

A. In a general sense, it's to assure the purity of the ballot, to be sure that everyone is given equal opportunity to vote, and to register to vote. And to oversee the day-to-day operation of the Election Commission office.

Q. But more specifically, on election day, what are your duties and responsibilities?

A. My duties on election day is to assure that the Election Officials operate under the state law, and run

each polling location under the state law, as set out in the statute.

Q. Are these Election Officials [p. 46] who work at polling places, were these people – do they – do they work for the Election Commission on a regular basis, or do they work just at each particular election?

A. Each particular election.

Q. Are they trained in any way?

A. Yes, they are. We're required to train them before each election.

Q. How much training are they given?

A. They are given an instruction school, which lasts about an hour-and-a-half, before each election.

Q. Talking about training, have you had any particular courses dealing with the election laws – training courses?

A. Yes. We have a seminar each year, and I'm also certified as a Registrar for the State of Tennessee.

Q. What is certification –

A. Certification means that you have passed the testing as far as the laws [p. 47] that are set out in Tennessee Code, as far as elections are concerned.

Q. So a test is given.

A. (Witness nods head in the affirmative.)

Q. Is it a one time test, or is it a periodic test?

A. It is a one-time test. Once you are certified, you are required to go to the seminars. And those seminars update you on whatever law changes are made.

Q. Did you request an opinion letter from the Attorney General's office as to the meaning of a particular language in Tennessee Code Annotated 27111?

A. Yes.

Q. What was your understanding of – let me ask this first. What was the particular language that you were asking the Attorney General to interpret?

A. At that time, the Commission was concerned about signs being placed on the property. And we had asked for an opinion to clarify what was meant as far [p. 48] as the signs being placed on the property of voting regulations.

Q. What was your understanding prior to asking for the opinion, as to the meaning of that statute about the display of signs, and materials, on the grounds?

A. My understanding was that anyone could solicit beyond the 100-foot boundary marker, and carry signs, or hand-out literature, whatever they needed to do to campaign for their candidate, beyond that 100-foot boundary marker.

Q. When the opinion was issued, what action did you take?

A. When the opinion was issued, that the actual opinion, with no alterations, was put in a binder and given to each of the Election Officials, for their reference

on election day, so that they would be sure that they would be doing what was set out in the opinion.

Plus, the opinion came in the middle of some of the instruction schools, and from that day forward, we instructed the Election Officials as to [p. 49] what the opinion said.

The election – the opinion was read to those. And it was – you know, to my understanding, everyone understood clearly what was in the opinion.

Q. What was –

MR. HERBISON: Objection to her testifying as to what the Election Officials understood; that is lack of personal knowledge.

THE COURT: I will sustain the objection.

BY MR. CATALANO:

Q. What was your understanding as to what was –

A. My understanding was that the – any campaign worker could still campaign beyond the 100-foot boundary marker, but they could not put signs in the grounds – on the grounds of the voting location.

Q. And did you convey that understanding to the Election Officials?

A. Yes.

[p. 50] Q. Let's get to the 100-foot boundary. What is your understanding as to the rule? I'd like you to – I know you've already –

A. The rule of the 100-foot boundary marker, is to give candidates who have poll watchers, the opportunity

to do last minute campaigning before the voters go into to vote.

And as long as they do it beyond that 100-foot boundary marker, they are within the statute.

Q. When you requested the opinion of the Attorney General about the placement of signs on the grounds, was your question in anyway directed to the 100-foot rule, directly?

A. The question was directed to – it was mainly to the 100-foot rule, but, it was basically to the matter of having signs put on the grounds of the property.

And the reason for that was because in 1986, the County had to pay for a candidate to have signs taken up, [p. 51] because he refused to take the signs off the grounds where we had a private location, which was a church. So we had to defray the costs of having those signs removed.

Q. Exactly how is the 100-foot rule enforced?

A. The 100-foot rule is enforced by the officer to mark off that 100-foot boundary marker. And they are told to enforce it as close to the walls as they possibly can.

We have inspectors of elections that also monitor the voting locations, and they help the officers to see that law is abided by.

Q. On election day, in the past, have you gone to the polling – any of the polling places, as part of your duties?

A. Yes, I have had the opportunity to go into one of the voting locations.

Q. And did you observe the 100-foot rule being enforced?

[p. 52] A. I observed the 100-foot rule being enforced. And I also observed a lot of voters being perturbed because they were having things pushed in their windows -

MR. HERBISON: Objection to this witness testifying as to the voters' state of mind.

MR. CATALANO: I think she's testifying, Your Honor, as to what she observed. I think -

THE COURT: I'll overrule the objection. She may testify as to what she saw.

THE WITNESS: The voters - it was obvious that the voters were upset, because they were having things placed - pushed in the windows. As a matter of fact, that's why I went out there, because we have -

MR. HERBISON: Objection to the testimony that the voters were upset.

THE COURT: Overruled.

BY MR. CATALANO:

Q. Did you see campaign workers [p. 53] beyond the 100-foot boundary distributing campaign literature -

A. Yes.

Q. - and soliciting votes?

A. (Witness nods in the affirmative.)

Q. And at the time that you found that - been to the polling places on election day, what's the - could you

give me an estimate as to the number of campaign workers that would be at a particular polling place, that you saw?

A. I estimate as many as 10.

Q. Have you witnessed any incidents involving the 100-foot rule?

A. We have - I have witnessed some incidents, where there was an argument between a voter and an intoxicated poll watcher. And that person had to be hospitalized because there was a brief altercation.

Q. On the times that you have observed the polling places on election day, were the campaign workers able to distribute their literature?

[p. 54] A. Yes, they were.

Q. And were they able to solicit votes?

A. Yes, they were.

Q. I believe you heard testimony with regard to the Gallatin Road Firehall voting precinct. To your knowledge, as Registrar, are individuals able to solicit votes, and distribute campaign literature outside the 100-foot boundary?

A. Yes, they are.

Q. As Registrar at Large of Davidson County, do you have any opinion as to what would happen at the polling places in Davidson County if the 100-foot rule was abolished?

A. I feel it would be total havoc. We've had havoc in the voting locations before without the 100-foot boundary

marker. There would be room for error, as far as totaling the votes. And as far as us having an accurate count, as near as possible, to bring in to us to certify to the State, I think the voting [p. 55] location would be overcrowded. The officer would not be able to conduct the election in a manner in which he should be able to conduct it.

I just see it as total havoc, because each candidate can have a poll watcher inside the location now, as well as the people beyond the 100-foot boundary marker.

If the 100-foot boundary marker were taken away, then we would have people campaigning inside. And we've had calls from voters - I've talked to voters where they felt like already their rights, their privacy was infringed upon by the handing out of the campaign material.

Q. The poll watchers, as opposed to campaign workers, do they - you say they're inside where the voting occurs - are they allowed to distribute campaign materials?

A. They are not allowed to distribute campaign material. They are there to assure that that candidate - the purity of that - the purity of the [p. 56] process for that candidate.

Q. As Registrar at Large for Davidson County, are you aware of any incidents of where either a private company or a religious denomination distributed literature or material within the 100-foot boundary on election day?

A. Not that I am aware of, no.

MR. CATALANO: No further questions at this time, Your Honor.

[p. 57] CROSS EXAMINATION

BY MR. HERBISON:

Q. Ms. Alexander, if there were persons at the polling places soliciting for charitable organizations inside that 100-foot boundary, would that pose the same kind of problem as persons soliciting votes inside that boundary?

A. Yes, it would. And if it posed the problem, our inspectors would take care of it. We have to assure that there is no interference from anyone, as far as the voting process is concerned.

Q. And isn't it true that if there is such interference, there are statutes other than the one challenged at bar, today, that are able to deal with that?

A. Yes, there are statutes.

Q. Okay. In fact, it's unlawful for someone to interfere with someone's voting rights irrespective of a 100-foot boundary; isn't it?

A. That's correct.

[p. 58] Q. Ms. Alexander, isn't it true that at some polling places there is a parking area less than 100 feet away from the door of the polling place?

A. Yes.

Q. And isn't it true that under the statute, as we have it, poll workers are prohibited from soliciting these voters, if they park within the 100-foot area?

A. Okay. In the legal opinion that was handed down, anyone that would like to park, would have bumper stickers on their car. And they can leave it there for two hours, and that's a form of campaigning.

Q. However, if a voter were to come park within 100 feet of – assume a voter were able to park 20 feet away from the door of a polling place –

A. No, they would not be able to campaign.

Q. And persons who wanted to solicit that person's vote, would not be able to do that; would they?

[p. 59] A. Not unless they met them back of the 100-foot boundary marker.

Q. In fact, there are some polling places where the entire grounds of the polling place are inside the 100-foot radius; aren't they?

A. Yes, there are, but we've not had any problems with anyone campaigning for that use beyond the hundred-foot boundary marker.

Q. Okay. Ms. Alexander, are there any guidelines promulgated by the County Election Commission as to what campaign literature is?

A. No, there is not. But any campaign literature is, of course – and Commissions have come up with in the past. And I think it is stated in that law, that any literature is anything that is handed out for a candidate, whether it be leaflets, signs, hats, shirts, whatever. That's a form of campaigning, and that's been considered as literature.

Q. Okay. If the person was wearing a lapel badge with a picture of a [p. 60] donkey on it, would that be campaign literature?

A. In a Primary Election, yes, it would be construed as campaign literature.

Q. If it were a nonpartisan election, would that be construed as campaign literature?

A. I don't think that it could be, unless a person had someone's name on it specifically.

Q. If a person were distributing handbills, that say abortion is murder, would that be considered campaign literature?

A. Unless there was a question on the ballot specifically for that, no.

Q. The real definition of campaign literature depends on what's at issue on the ballot?

A. Correct.

Q. Okay. If a person were distributing handbills on behalf of a political figure, who was not standing for election on that day, could that person do [p. 61] that inside the 100-foot boundary?

A. No, they could not.

Q. Even though it's on behalf of a person who's not on the ballot?

A. If it's on behalf of someone that is not on the ballot – my understanding of your question was, it was for something that wasn't on the ballot that day.

Q. So if, for example, at the November 1988 election, a person were to be distributing literature, talking about how good a senator Albert Gore is, would that person be able to do that inside the 100-foot boundary?

A. As long as they do not interfere with the process, there is not anything – except if Albert Gore was not on the ballot then, it would not be considered until such time as he would be on the ballot.

Q. Okay. And if a person were distributing pamphlets with the message "Jesus Saves", would he be permitted to do that inside the 100-foot boundary?

[p. 62] A. As long as he did not create interference.

Q. Ms. Alexander, if you know, has there any [sic] been any discussion at the Davidson County Election Commission of prohibiting poll workers from the grounds of the polling places?

A. I believe in one meeting, leading up to the opinion that we asked for, a Commissioner did state – make that statement. But there are several times Commissioners makes statements in discussion before a motion is taken on it.

The Election Commissioners are required to uphold the law, as I am. And they just cannot abolish poll workers, as long as it's a part of the Tennessee Code.

Q. But there has been some discussion of that; hasn't there?

A. Yes. When a former Commissioner was on the ballot – on the Commission, there was discussion, yes.

Q. Okay. And not long after that discussion, the Election Commission [p. 63] directed you to ask for this opinion; didn't they?

A. Yes.

Q. Ms. Alexander, at the school for Election Officials, immediately prior to the August 1987 election, to your knowledge, were any Election Officials instructed to keep poll workers off the grounds of the polling places?

A. No. Maybe the officers misunderstood or whom-ever misunderstood. A lot of times, they are not listening attentively when we do instruction schools. But I do the instruction schools, and they were not instructed as to anything of that sort.

Q. Based on what you have heard, is it fair to say that there was some misunderstanding about it?

A. I am sure they misunderstood. That was my purpose for having the legal opinion itself, bound and give to the officers to be sure that they did not misunderstand what the ruling was.

Q. And isn't it true that the [p. 64] candidates for election in the August 1987 election were instructed not to places [sic] coworkers on their behalf on the grounds of polling places?

A. No.

MR. CATALANO: Your Honor, I think she just answered that question a few minutes ago.

MR. HERBISON: No. That question had not been asked. I was asking whether the candidate –

THE COURT: All right. She's answered it. You may go to the next question.

MR. HERBISON: I believe that's all I have.

MR. CATALANO: I just have a few - a couple of questions, Your Honor.

[p. 65] REDIRECT EXAMINATION

BY MR. CATALANO:

Q. Ms. Alexander, there were a couple of points made about some other statutes that prohibit interference with the Election Officials' duties, and also intimidation of voters.

If the 100-foot boundary were abolished, even if those particular statutes were enforced, what do you think would happen?

A. I think that we would have some people that would be prosecuted, because there would be some intimidation of voters, and there would be some interference as far as the poll officials conducting the election.

Q. Do you think that those statutes would be sufficient to take care of the problems that would be created by the chaos and confusion that you said would occur?

A. No, I do not. It would take care of a portion of it, and that is the [p. 66] intimidation and interference. But as far as the poll officials being able to operate under the manner that they should, and get the vote count in the manner in which they should, or conduct the election in the manner in which they should, I do not feel that it would be - that it would cover that.

Q. Would there still be confusion?

A. There would still be mass confusion.

Q. Would there still be possibility from mistakes

A. Yes.

Q. - by the Election Officials?

A. Yes, there would.

MR. CATALANO: Thank you.

[p. 67] RECROSS EXAMINATION

BY MR. HERBISON:

Q. Ms. Alexander, a person may be prosecuted for intimidating a voter or for prohibiting - or for preventing an election official from carrying out his duties, irrespective of the 100-foot boundary; isn't that true?

A. Yes.

Q. And you really don't have any personal knowledge of what would result if the 100-foot boundary were abolished; do you?

A. I do not have any personal knowledge, as fast as whether the 100-foot boundary marker would be - what effect it would have. I do have personal knowledge of what happened in August of 1987, and it was total chaos, because of the heat of the battle at that time for the mayoral candidate.

I have had poll officials to quit, because they had people reaching over them, getting things from the table,

[p. 68] like the poll list and the printout. And it affected their operating the election in the manner in which they felt like they could.

So I feel like I do have some idea, I do have some perspective as to what it would do if we had as many people in the voting location, if we did away with the 100-foot boundary marker.

Q. Isn't it [sic] true that in August of 1987, the 100-foot boundary was in force, and was being enforced?

A. It was in force, and it was being enforced. And the only people in the location were the one person per candidate. And think about the number of candidates that you have on the ballot at the time. And some of the locations are about as large as this room, or smaller.

And you have as high as six or seven voting machines, 15 Election Officials, and one person per candidate. There's no way that an election official or an officer of election could oversee and to be sure that the process would go [p. 69] on in the manner that it should.

Q. And isn't it true that that's the case whether there's the 100-foot boundary or not?

A. I feel we don't have as much chaos. In '87, as I said, that did happen. And that was a concern, and that was a concern to the extent to where we had some representatives that tried to introduce a bill to try to alleviate some of these problems.

As I said, if you have one person, which everyone is allowed, in the voting location, you have as high as 172 candidates on the ballot, and each of those decide to have one person inside, and then you take away the 100-foot

boundary marker, and those people will be able to campaign all the way to the machine with those people, I feel it would be a great interference.

Q. And wouldn't the same interference be imposed by the charitable solicitation or religious solicitation?

A. Of course. And at that [p. 70] time, that's why we have inspectors of the election. If it creates that problem, that problem will be taken care of, also.

MR. HERBISON: Okay. that's all I have. Just a moment please. That's all.

MR. CATALANO: No further questions, Your Honor.

THE COURT: You may step down.

MR. CATALANO: That is the Defendant's proof.

THE COURT: All right. Any rebuttal, Mr. Herbison?

MR. HERBISON: No, further witnesses.

THE COURT: You may make your closing arguments.

* * *

IN THE CHANCERY COURT FOR THE STATE
OF TENNESSEE TWENTIETH JUDICIAL
DISTRICT, DAVIDSON COUNTY, PART I

MARY REBECCA FREEMAN,)	
)	
Plaintiff,	)	No. 87-1763-I
)	
v.)	
CHARLES W. BURSON, in his	)	ORDER FILED &
Capacity as Attorney General	)	ENTERED 5/5/89
and Reporter for the State of	)	MINUTE BOOK
Tennessee, <i>et al.</i>,	)	274
)	
Defendants.	)	PAGE 404

FINAL ORDER

This case came on to be heard before the Honorable Irvin H. Kilcrease, Jr., on October 24, 1988, on the merits. After considering the testimony of witnesses, stipulation of facts, and argument of counsel, this court Orders the following:

1. The Memorandum issued by this court and filed on April 26, 1989, is incorporated by reference into this Order.
2. T.C.A. § 2-7-111 does not violate the First and Fourteenth Amendments to the United States Constitution, nor Article I, §§ 8 and 19, or Article XI, § 8 of the Tennessee Constitution.
3. The plaintiff's complaint is DISMISSED.

/s/ Irvin H. Kilcrease Jr
CHANCELLOR IRVIN H.
KILCREASE, JR.

APPROVED FOR ENTRY:

/s/ Michael W. Catalano
MICHAEL W. CATALANO
Deputy Attorney General
Attorney for the Defendants
450 James Robertson Parkway
Nashville, Tennessee 37219-5025
(615) 741-3499

IN THE CHANCERY COURT FOR THE STATE
OF TENNESSEE TWENTIETH JUDICIAL
DISTRICT, DAVIDSON COUNTY, PART I

MARY REBECCA FREEMAN,)	
Plaintiff,)	
vs.	)	No. 87-1763-I
CHARLES W. BURSON, in his	)	Filed
capacity as ATTORNEY	)	MAY 18 1989
GENERAL)	
AND REPORTER for)	
the STATE OF)	
TENNESSEE, et al.,)	
Defendants.		

NOTICE OF APPEAL

Notice is hereby given that Mary Rebecca Freeman, the Plaintiff in the above-styled action, hereby appeals to the Supreme Court of Tennessee from the final order in this cause entered on the 5th day of May, 1989. The constitutionality of a statute being the sole determinative question, this appeal as of right is to the Supreme Court pursuant to Tennessee Code Annotated § 16-4-108.

Respectfully submitted,

/s/ John E. Herbison
JOHN E. HERBISON
Attorney for Plaintiff
1205 Eighth Avenue South
Nashville, Tennessee 37203
(615) 254-6300

[Certificate of Service omitted in printing]

IN THE CHANCERY COURT FOR
THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT,
DAVIDSON COUNTY, PART I

MARY REBECCA FREEMAN,	)	No. 87-1763-I
Plaintiff-Appellant,)	
vs.	)	ORDER FILED
CHARLES W. BURSON,	)	& ENTERED
in his capacity as ATTORNEY	)	AUG 18 1989
GENERAL AND REPORTER for	)	MINUTE
the STATE OF TENNESSEE, et al.,	)	BOOK 276
Defendant-Appellees.	)	PAGE 351

AGREED ORDER CORRECTING
AND APPROVING TRANSCRIPT

It appears that the parties are in agreement that the Plaintiff's Motion to Correct Transcript in the above-styled matter is well taken and should be granted. The Transcript of Evidence filed with the Clerk and Master on July 24, 1989 is accordingly approved, subject to the following additions and/or corrections. It is ORDERED:

1) That the words, "in seeking[.]" appearing at Page 6, line 19, be corrected to read, "and seeking[.]"

2) That the words, "election from[.]" appearing at Page 8, line 6 be corrected to read, "election for[.]"

3) That the words, "her contention[.]" appearing at Page 31, line 20, be corrected to read, "her intention[.]"

4) That the words, "Anne Deowe[.]" appearing at Page 33, line 11, be corrected to read, "Ann Deol."

5) That the words, "aren't they?" appearing at Page 59, line 6, be corrected to read, "aren't there?"

6) That the word, "suffered[.]" appearing at Page 70, line 21, be corrected to read, "suffers[.]"

7) That the word, "greater[.]" appearing at Page 70, line 22, be corrected to read, "greatest[.]"

8) That the word, "fact[.]" appearing at Page 70, line 24, be corrected to read, "facet[.]"

9) That the question mark appearing at page 71, the end of line 11, be corrected to indicate a period.

10) That the punctuation of the words, "invalidated this statute in part, because of this content distinction[.]" appearing at Page 72, lines 12-13, be corrected to read, "invalidated this statute, in part because of this content distinction."

11) That the words, "a valid basis comparison[.]" appearing at Page 73, lines 5-6, be corrected to read, "a valid basis for comparison."

12) That the words, "Dunn versus Weinstein," appearing at Page 73, lines 21-22, be corrected to read, "Dunn versus Blumstein."

13) That the words, "the State can't chose - can't constitutionally chose, means that[.]" appearing at Page 73, lines 24-25, be corrected to read, "the State can't choose - can't constitutionally choose means that[.]"

14) That the words, "Budish versus Barry," appearing at Page 74, line 9, be corrected to read, "Boos versus Barry[.]"

15) That the words, "about which[.]" appearing at Page 76, line 6, be corrected to read, "by which[.]"

16) That the words, "Roberts versus Olkahoma[.]" appearing at Page 79, line 16, be corrected to read, "Broadrick versus Oklahoma."

17) That the words, "Budish versus Barry," appearing at Page 82, line 5, be corrected to read, "Boos versus Barry[.]"

18) That the word, "Budish[.]" appearing at Page 82, line 17, be corrected to read, "Boos[.]"

19) That the words, "second area effect[.]" appearing at Page 91, line 25, be corrected to read, "secondary effect[.]"

20) that the word, "Budish[.]" appearing at Page 93, line 14, be corrected to read, "Boos[.]"

21) that the words, "probable extent[.]" appearing at Page 94, line 22, be corrected to read, "probable effect[.]"

22) That the Transcript of Evidence, along with the above coorections [sic], is approved pursuant to Rule 24(f) of the Tennessee Rules of Appellate Procedure.

It is so ORDERED. Enter this ____ day of ____, 1989.

/s/ Irvin H. Kilcrease Jr.
IRVIN KILCREASE,
CHANCELLOR

[Approved for entry and Certificate of
Service omitted in printing]